

tained these contentions, holding that a decree "obtained by arrangement between the parties, the Court bestowing no judicial examination on the merits of the question, can never be *res judicata*." Had the previous action been fought out, in the opinion of the Court the matter in question would have been *res judicata* by the judgment, and from the nature of the action would have determined the rights as against the whole world, including the plaintiff. Had the plaintiff been a party to the consent judgment, he would have been bound by it as a consenting party, and in either case there would have been an estoppel by the judgment, but as it was not fought out, and the plaintiff was no party to it, no estoppel on the plaintiff was worked by the judgment: see also Chand on *Res Judicata*, s. 58, p. 125; Black on *Judgments*, 705-6.

The estoppel is confined to the matters necessarily involved in the consent given or the adjudication which has been had. We find, therefore, such cases as *Goucher v. Clayton*, 11 Jur. N.S. 107, where, in an action to restrain infringement of a patent, it was shown that in a previous action for the same purpose between the same parties before an issue was raised, the defendants confessed judgment, and took a license from the plaintiff patentee for a limited time. This judgment the plaintiff contended estopped the defendants from denying the validity of the patent. Sir W. Page Wood, V.C., held otherwise on the ground that there had been no pleadings and no issue raised.

In the case of a judgment by default the rule in England seems to be that the defendant is only precluded by such a judgment from afterwards denying the averments in the statement of claim and the facts thereby actually put in issue: *Howlett v. Tarte*, 10 C.B. N.S., 813.

In the case of *In re South American and Mexican Co. ex parte Bank of England*, 8 R. 691; 1894, W.N. 147, affirmed by C.A. in 1895, 1 Ch. 37, it appeared that a judgment had been consented to in a previous proceeding to recover an instalment of money payable under an agreement, which judgment proceeded on the ground that the agreement under which the money was payable was valid. In the proceeding to recover